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SENSITIVE
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11. (SBU) Summary. Over the past year, under the leadership of the National Board Against Counterfeiting (HENT), the GOH has taken concrete steps to improve the protection of intellectual property rights, combat counterfeiting and piracy, and increase public awareness of the importance of IP protection. As a result of these considerable positive efforts, Post believes Washington agencies should consider removing Hungary from the Special 301 watch list during its 2010 review, taking note of the positive actions taken to date, but underlining the expectation that these actions will continue. To help support positive change, we believe the USG should organize a conference targeting judges and senior law enforcement and policy officials to underscore the importance of levying deterrent-level penalties for IPR crimes. End summary.

12. (U) During an October 8-9 visit to Hungary, USTR Europe Director Erin McConaha met with GOH officials responsible for IPR protection and enforcement, representatives of trade associations as well as the private sector to survey developments in the protection of intellectual property rights in Hungary.

THE NATIONAL BOARD AGAINST COUNTERFEITING (HENT)

13. (SBU) The cornerstone of Hungary's Intellectual Property Rights strategy is the creation in January 2008 of the National Board Against Counterfeiting (HENT), and the HENT-developed National Strategy and Action Plan for 2008-2010, which was adopted by government decree 2140/2008. The HENT is chaired by State Secretary for Justice Affairs Dr. Dezso Avarkeszti, and falls under the authority of the Minister of Justice and Law Enforcement. The HENT meets regularly and is comprised of 11 government agencies and 10 private sector organizations, including the Ministry of Justice and Law Enforcement, the Patent Office, the Ministry of Economy, the Customs and Finance Guard, the National Police, as well as NGOs like AmCham, BSA, PHARMA, the Foundation for the Copyright Protection of Audiovisual Works (ASVA), and others.

14. (SBU) Over the past year, the GOH - often with the close cooperation of private industry - has taken a number of concrete actions to enhance the level of IPR protection, by increasing public awareness, increasing the training of law

enforcement officials and the judiciary, and through enhanced enforcement efforts. The following highlights some of these actions:

INCREASING PUBLIC AWARENESS

15. (SBU) --In December 2008, the HENT launched a daily newsletter on counterfeiting and piracy that highlights legal cases, hazards of counterfeiting, etc, which it distributes to journalists and newspapers. This has resulted in greater media attention to the issue of IPR protection.

--During the December 2008 holiday shopping season, in an organized public awareness campaign, labels and flyers were affixed to personal computers, laptops, and other electronic products for sale in major retail outlets warning about the use of illegal software and the illegal downloading of music and films. A similar campaign was launched in April 2009 in major electronic stores in larger towns throughout the country. A separate campaign earlier this year focused on counterfeiting of medical products, and involved leaflets placed in medical consultation rooms, pharmacies and gyms, as well as newspaper advertisements warning of the dangers of counterfeit medical products.

--Last year, the Customs Guard created a "counterfeit museum" with interactive exhibits to highlight the importance of intellectual property rights protection, and to point out possible dangers posed by counterfeit products.

--Other innovative awareness-raising measures include an annual HENT-funded award at the Hungarian Music Awards given to the artist with the most frequently legally downloaded album of the year; and an art competition for secondary school students in April and May 2009 in which the winners

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received licensing agreements paid by the HENT for the use of their works - the competition was entitled "Counterfeiting as I Can See It - My Creation, My Property."

--Together with the Customs Guard, the HENT is planning an exhibition in Budapest in December to draw attention to the dangers of counterfeiting.

TRAINING LAW ENFORCEMENT OFFICIALS AND JUDGES

16. (SBU) Working with industry, the HENT has also focused on increasing training for law enforcement officials and judges:

--ProArt (the Alliance for Copyright Protection) officials told us that the organization is participating in a HENT supported "roadshow" visiting each county in Hungary between September and November to provide a full day anti-piracy training to local law enforcement officials (20 training sessions in total).

--In August, the HENT reached agreement with the Police College of Hungary to make "Intellectual Property Protection" a mandatory course for officers involved in economic crimes investigation.

--In April 2009, the HENT sponsored a conference on the cooperation of judges, prosecutors, and officers of the Hungarian Police and Customs Guard in criminal copyright infringement cases.

--The Customs and Finance Guard also sponsors a training seminar three times per year for customs officers in different offices around the country, and invites police, prosecutors, and judges to also attend.

--On September 24, the HENT co-sponsored a workshop in Budapest on counterfeiting for enforcement officers and judges. In addition to HENT, Customs and police speakers, presentations were made by representatives of GM, Brother,

Sony, Microsoft, Oakley, and Louis Vuitton.

--Anti-piracy representatives from Microsoft told us they regularly participate in a government-sponsored anti-counterfeiting training sessions for both sitting judges and judge trainees at the Judicial Training Academy.

IPR LAW ENFORCEMENT

¶7. (SBU) Rights-holders and trade associations confirm that GOH law enforcement officials (both the Police and the Customs and Finance Guard) are responsive to reports of infringements and take prompt action. Gyula Almassy, head of the Hungarian Customs and Finance Guard's IPR Department, noted that his team responds to every right-holder complaint received. David Horvath, Director of the ProArt Association for the Protection of Copyright, confirmed this, and gave the Customs Guard particularly high marks for their responsiveness. He noted that the technical ability of Customs and Police authorities to identify infringing products is much improved. Both BSA and Microsoft also praised the enforcement efforts of the police and the Customs Guard.

¶8. (SBU) Almassy stated that many rights-holders email him or his team directly about infringing products, while others choose to file more formal complaints. Almassy indicated that his team is able to respond "within hours, and often sooner" to tips about infringing products. The Customs Guard is also proactive, and regularly self-initiates raids and investigations. Almassy noted that one of the greatest challenges continues to be a lack of information from rights holders to enable police or the Customs Guard to identify infringing products. Sandor Simonkovics of BSA noted that the HENT is in the process of creating a centralized IP database that customs authorities, police, prosecutors and judges can all access, which would provide access to information on protected goods. This would be particularly useful to prosecutors, who currently must rely on expensive expert witnesses to provide valuation information for intellectual property, and would help accelerate IPR trials.

¶9. (SBU) Almassy noted that the most frequently seized counterfeit hard goods tend to be clothing, accessories,

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hats, mobile phone accessories, toys, and CD/DVDs. He said that customs officials are seeing fewer luxury products recently, and are seeing a greater proportion of counterfeited daily use products like laundry detergent, which he attributes to the current economic situation.

¶10. (SBU) Regarding Internet-based piracy, organizations like ProArt and ASVA generally combat infringers first by sending "take-down" letters to ISP's and website owners distributing infringing content. ASVA notes that it has issued "thousands of take down letters." ProArt's Horvath notes in his experience, a first or second letter is effective "in 99 percent of the cases". When these letters are not effective - usually in cases where a more organized, profit-generating infringer is involved - the cases are referred to the police. ProArt estimates that it refers about 50-60 such cases to police each year.

¶11. (SBU) In April 2009, the Budapest Police and the Customs and Finance Guard, in conjunction with the Hungarian National Bureau of Investigation, raided the offices of Coldfusion Hungary, Ltd, confiscating 43 servers with an estimated database of 200-250 terabytes, possibly the largest such seizure ever made in Europe. The pirates operated through an "SMS Web" model, whereby customers would pay premium SMS service fees in exchange for access to download illegal content. After the servers were taken offline, Internet traffic in Hungary dropped off by 10 percent, according to Budapest Internet Exchange data. There were six arrests made

in the case, although the main perpetrator fled Hungary and is still at large.

PROSECUTING IPR CRIMES

¶12. (SBU) Dr. Marton Barta, head of Department of the Hungarian Prosecutors' Office told us that more than 90 percent of the cases presented to the Prosecutors' Office from the Customs Guard and police result in prosecutions. This figure was confirmed by Sandor Simonkovics, former head of BSA Hungary. Dr. Barta noted that those cases not prosecuted are most often discarded due to their low monetary value or due to a lack of convincing evidence in the case. He noted that most of the criminal IPR cases prosecuted result in convictions, and that the prosecutor's office has developed considerable experience dealing with such cases. The problem, according to both government officials and rights holders, however, is that punishments handed down by the judiciary are rarely severe enough to have a significant deterrent effect. Convicted offenders tend to receive relatively small fines and the confiscation of assets used in the perpetration of the crime, but rarely face prison time.

¶13. (SBU) IPR-related trade organizations tell us, however, that things are slowly improving, and reacted positively to news of a sentence handed down on October 1 in a criminal copyright infringement case. The court sentenced the perpetrator to a 2-year prison sentence, which was suspended for five years (meaning that if the offender commits any crime during the next five years, he will be required to serve the two year prison sentence). He also faced a confiscation of assets totaling about USD 3,300. In a press release, BSA noted that "it is becoming clear that the legal judgment of such cases is getting more severe compared to earlier cases."

¶14. (SBU) Microsoft representatives tell us that despite the current negative economic climate in Hungary, piracy rates have not increased this year. They complain, however, that the continuous decline in piracy rates seen over the past several years appears to have stagnated. Former Business Software Alliance President Sandor Simonkavics agrees that piracy levels in Hungary are down over the past five years. Microsoft officials tell us they are "comfortable" with the situation in the corporate sphere, but still see room for improvement in the consumer sphere, despite a recognized improvement in levels of pre-loaded legal software on PCs and laptops sold by major retail outlets.

THE NEED FOR DETERRENT-LEVEL SENTENCING

¶15. (SBU) Despite the progress in other areas, convincing Hungary's independent judiciary to hand out deterrent level penalties to IP violators remains a challenge, with change

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coming only gradually. Dr. Barta expressed the view that Hungarian law allows for sufficiently strong penalties against convicted offenders (the Hungarian Criminal Code allows for maximum prison sentences of 8 years), but that the independent judiciary cannot be compelled to hand out more severe sentences.

¶16. (SBU) Unofficially, Dr. Barta opined that judicial leniency in IPR cases may come from the impression that IPR crimes are not as serious as violent or other crimes, or that the individuals being prosecuted for IPR crimes tend to be the "small fish" with whom judges tend to be more lenient. He admitted that judicial leniency in such cases can have a demoralizing effect on prosecutors.

¶17. (SBU) In response to the question of what the U.S. might do to help encourage progress in this area, Dr. Barta noted that a seminar or conference with U.S. experts could be useful for both judges and prosecutors.

¶18. (SBU) Many look to the September Pest County Court sentence as a positive sign that the judiciary is getting tougher on IPR crimes. BSA notes that "the current decision of the Court reflects a growing seriousness against these crimes and the increasing condemnation of those violating copyright laws." The GOH and the HENT recognize that judicial sentencing remains an issue, and are taking specific measures to address it, including through the above-mentioned trainings and conferences targeting the judiciary.

HENT NATIONAL STRATEGY AND ACTION PLAN 2008-2010

¶19. (U) Last year, the HENT prepared a National Strategy and Action Plan for 2008-2010. HENT's action plan is divided into three main pillars, and identifies priority industries for which the HENT will focus its efforts. The first pillar relates to statistics, and how to improve the collection and evaluation of statistics on piracy rates and the economic consequences of counterfeiting. The second pillar is awareness raising, and is not limited to public awareness, but also includes increasing awareness of law enforcement officials and the judiciary. The third pillar focuses on law enforcement, and includes review of the law enforcement-related legal environment, as well as developing tools and measures to help law enforcement authorities carry out their work.

¶20. (U) In addition to the three pillars mentioned above, the action plan puts special focus on three industry areas: the food industry; pharmaceutical products and pesticides; and creative and IT industries. The industry areas were selected because of the possible social and health consequences of counterfeit products in these areas; the existing level of counterfeiting in these industries; and areas of domestic industrial interest.

¶21. (U) The action plan contains a list of concrete measures to be taken under each of the pillars and in each of the industry areas on an annual basis for the years 2008-2010. The plan identifies the responsible ministry/office, funding allocations, and deadlines for action. Five working groups have been established to pursue the action items. The HENT received earmarked funds of USD 275,000 for 2008, and USD 390,000 each for 2009 and 2010. The private sector also provides support through training, equipment, products, venues, etc.

¶22. (U) Post and USTR have the latest copy of the action plan. Offices interested in obtaining a copy can contact Post or USTR's Erin McConaha. In addition, Hungarian Patent Office representative Johanna Staedler told Ms. McConaha that HENT representatives would be willing to participate in a videoconference with U.S. officials to summarize HENT efforts to combat counterfeiting in Hungary.

COMMENT: RECOGNIZING PROGRESS AND ENCOURAGING CONTINUING EFFORTS

¶23. (SBU) Over the past 18 months, the GOH has taken a serious and measured approach to the IPR issue, by formulating a true interministerial committee to deal with the issue, which incorporates the private sector in a meaningful way. It has developed a detailed action plan, approved by government decree, and has allocating funding to

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achieve the objectives. It is making concrete progress on implementing the elements of the action plan, including by increasing training to justice and law enforcement officials, stepping up enforcement activities to combat counterfeiting and piracy, and by increasing public awareness of IP protection. The HENT's action plan addresses the key issues outlined as areas of concern in recent Special 301 reports for Hungary. Industry representatives, including BSA, ProArt, and AmCham all confirm that the GOH has demonstrated

a strong commitment to reducing counterfeiting and piracy.

¶24. (SBU) In order to reinforce these efforts and to encourage their continuation, we urge Washington agencies to consider removing Hungary from the Special 301 watch list during the 2010 review, taking note of the positive actions taken to date, but underlining the expectation that these actions will continue.

¶25. (SBU) We believe that the USG should consider hosting a conference or workshop to support positive change in the major remaining area of concern - the failure of the judiciary to hand out deterrent level penalties to violators of IPR laws. Bringing judges and senior law enforcement and policy officials together with U.S. judges, FBI, State, and Commerce counterparts, as well as industry experts, could help emphasize the costs to society of IPR-related crime - including costs to the economy, public health and safety, and the flourishing of creative industries. Post looks forward to working with Washington agencies to further develop these ideas.

¶26. (U) This message has been cleared by USTR Europe Director
Erin McConaha.
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